

SENATE BILL No. 26

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-29-8-3; IC 22-6.5; IC 35-44-2-4.

Synopsis: Collective bargaining for state employees. Allows certain state employees to bargain collectively with the state through an exclusive representative. Requires the education employment relations board to implement the collective bargaining law. Specifies the rights and duties of the employees and the employer in collective bargaining. Provides for the recognition of exclusive representatives, payroll deductions for employee organization dues, complaint proceedings before the board, judicial review of complaints, mediation, and arbitration. Prohibits lockouts and strikes.

Effective: July 1, 2007.

Bowser

January 8, 2007, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 26

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-29-8-3, AS ADDED BY P.L.1-2005, SECTION
2 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2007]: Sec. 3. When a mediator is requested or required under
4 IC 20-29-6 or **IC 22-6.5-4-12**, the board shall appoint a mediator from
5 the staff or panel established under section 2 of this chapter.

6 SECTION 2. IC 22-6.5 IS ADDED TO THE INDIANA CODE AS
7 A **NEW ARTICLE** TO READ AS FOLLOWS [EFFECTIVE JULY 1,
8 2007]:

9 **ARTICLE 6.5. COLLECTIVE BARGAINING FOR STATE**
10 **EMPLOYEES**

11 **Chapter 1. Definitions**

12 **Sec. 1. The definitions in this chapter apply throughout this**
13 **article.**

14 **Sec. 2. "Bargain collectively" means to perform the obligation**
15 **of the employer (through the employer's executive or the**
16 **executive's designee) and of the designee of the exclusive**
17 **representative to do the following:**



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(1) Meet at reasonable times, including meetings in advance of the budget making process.

(2) Negotiate in good faith concerning the following:

(A) Wages.

(B) Salaries.

(C) Hours.

(D) Salary and wage related benefits.

(E) All other terms and conditions of employment, including health and safety conditions.

(3) Execute a written contract incorporating an agreement if a written contract is requested by either party.

Sec. 3. "Bargaining unit" means a unit to which full-time employees of a state agency (as defined in IC 4-15-1.8-1) are assigned under IC 22-6.5-5-2.

Sec. 4. "Board" refers to the Indiana education employment relations board established by IC 20-29-3-1.

Sec. 5. "Complainant" means an employer, employee, employee organization, or exclusive representative that files a complaint with the board under IC 22-6.5-3.

Sec. 6. "Employee" means a full-time employee of a state agency (as defined in IC 4-15-1.8-1) who is a member of a bargaining unit.

Sec. 7. "Employee organization" means an organization in which employees participate and that exists to deal with the employer concerning any of the following:

(1) Grievances.

(2) Labor disputes.

(3) Wages.

(4) Rates of pay.

(5) Hours of employment.

(6) Employment conditions.

Sec. 8. "Employer" means the state.

Sec. 9. "Exclusive representative" means an employee organization that is:

(1) certified under IC 22-6.5-2-9(3) by the board; or

(2) recognized by the employer as the exclusive representative of the employees in a bargaining unit.

Sec. 10. "Respondent" means a person against whom a complainant files a complaint under IC 22-6.5-3.

Sec. 11. "Strike" includes concerted:

(1) willful absence of an employee from the employee's position;

(2) stoppage of work; or

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(3) abstinence in whole or in part from the full and proper performance of the duties of employment.

Chapter 2. Employee Organizations

Sec. 1. This chapter applies to the state and employees of the state.

Sec. 2. The board shall implement and administer this chapter and IC 22-6.5-3 through IC 22-6.5-5. In carrying out its responsibilities under IC 22-6.5-3 through IC 22-6.5-5, the board may exercise the powers granted to the board under IC 20-29-3-11.

Sec. 3. Employees may do the following:

- (1) Form, join, or participate in employee organizations.
- (2) Participate in collective bargaining with the employer through representatives of the employees' choosing.
- (3) Engage in other activities, individually or in concert, to establish, maintain, or improve the following:
 - (A) Salaries.
 - (B) Wages.
 - (C) Hours.
 - (D) Salary and wage related fringe benefits.
 - (E) All other terms and conditions of employment, including health and safety conditions.

Sec. 4. The employer shall manage and direct the employer's operations and activities to the full extent authorized by law.

Sec. 5. The employer may do the following:

- (1) Direct the work of an employee, except where otherwise provided by law.
- (2) Establish policy.
- (3) Hire, promote, demote, transfer, assign, and retain an employee in accordance with law and collective bargaining agreements.
- (4) Suspend or discharge an employee in accordance with law.
- (5) Maintain the efficiency of governmental operations.
- (6) Take action necessary to carry out the missions of the state.
- (7) Protect the fiscal soundness and ensure the continuation of vital state services.
- (8) Take actions necessary to carry out the employer's responsibilities in emergencies, including any of the following:
 - (A) Riot.
 - (B) Military action.
 - (C) Natural disaster.
 - (D) Civil disorder.

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1 **Sec. 6. In accordance with rules adopted by the board under**
 2 **IC 4-22-2, the board shall investigate a petition filed with the board**
 3 **by:**

4 **(1) an employee organization alleging that at least thirty**
 5 **percent (30%) of the employees in the appropriate bargaining**
 6 **unit wish to be represented for collective bargaining purposes**
 7 **by an exclusive representative;**

8 **(2) the employer alleging that at least one (1) employee**
 9 **organization has presented a claim to be recognized as the**
 10 **exclusive representative of an appropriate bargaining unit; or**

11 **(3) an employee or a group of employees alleging that at least**
 12 **thirty percent (30%) of the employees in a bargaining unit**
 13 **assert that the designated exclusive representative is no longer**
 14 **the representative of the majority of employees in the**
 15 **bargaining unit.**

16 **Sec. 7. If, upon reviewing a petition under section 6 of this**
 17 **chapter, the board has reasonable cause to believe that a question**
 18 **of representation exists, the board shall conduct a hearing within**
 19 **thirty (30) days after the petition is filed with the board. If the**
 20 **board finds upon the record of the hearing that a question of**
 21 **representation exists, the board shall do the following:**

22 **(1) Direct an election by secret ballot within thirty (30) days**
 23 **after the hearing.**

24 **(2) Certify the results within ten (10) days after the election.**

25 **Sec. 8. If the parties described in section 6(1), 6(2), or 6(3) of this**
 26 **chapter with respect to a petition waive the hearing, the board is**
 27 **not required to conduct a hearing under section 7 of this chapter**
 28 **before directing a consent election under section 7(1) of this**
 29 **chapter.**

30 **Sec. 9. The board shall determine who is eligible to vote in an**
 31 **election directed under section 7 of this chapter and shall establish**
 32 **rules governing the election, subject to the following conditions:**

33 **(1) To be placed on the ballot, an employee organization must**
 34 **be designated by more than ten percent (10%) of the**
 35 **employees in the unit.**

36 **(2) If none of the choices on the ballot receives a majority in**
 37 **an election but a majority of all votes cast are for**
 38 **representation by some employee organization, the board**
 39 **shall conduct a runoff election.**

40 **(3) An employee organization that receives the majority of the**
 41 **votes cast in an election shall be certified by the board as the**
 42 **exclusive representative.**

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1 **Sec. 10.** An election may not be directed in a bargaining unit or
 2 in a subdivision of a bargaining unit within which a valid election
 3 has been held in the preceding twelve (12) months.

4 **Sec. 11.** Notwithstanding sections 6 through 10 of this chapter,
 5 the employer shall recognize a particular employee organization as
 6 the exclusive representative of the employees within an appropriate
 7 bargaining unit if the employee organization presents to the
 8 employer evidence that the employee organization represents a
 9 majority of the employees within the bargaining unit, unless an
 10 employee organization or a group of employees representing
 11 employees within the bargaining unit files a written objection to
 12 recognition with the employer or the board.

13 **Sec. 12.** If:

14 (1) an employee organization, under section 11 of this chapter,
 15 provides the employer with evidence that the employee
 16 organization represents a majority of the employees within an
 17 appropriate bargaining unit; and

18 (2) no written objection to the recognition of the employee
 19 organization as the exclusive representative of the employees
 20 within the bargaining unit is filed under section 11 of this
 21 chapter by another employee organization or a group of
 22 employees representing the employees within the bargaining
 23 unit;

24 the board is not required to hold a hearing or to direct an election
 25 on the question of whether the employee organization referred to
 26 in subdivision (1) shall be recognized as the exclusive
 27 representative of the employees within the bargaining unit.

28 **Sec. 13.** Before recognizing an employee organization as an
 29 exclusive representative under section 11 of this chapter, the
 30 employer must post a written public notice of the employer's
 31 intention to recognize the employee organization as the exclusive
 32 representative of the employees within the bargaining unit. The
 33 notice must be posted in places where it will be seen by the
 34 employees within the employees' bargaining unit for at least thirty
 35 (30) days immediately preceding the recognition.

36 **Sec. 14.** Notwithstanding sections 6 through 10 of this chapter,
 37 in a case in which:

38 (1) there is a historical pattern of recognition; and

39 (2) the employer has recognized an employee organization as
 40 the sole and exclusive bargaining agent for an existing
 41 bargaining unit;

42 the board shall find that the employees in the bargaining unit are

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1 represented by that employee organization and recognize the
2 employee organization as the exclusive representative.

3 Sec. 15. (a) A determination made under this chapter that an
4 employee organization has been chosen as the exclusive
5 representative by a majority of the employees in an appropriate
6 bargaining unit is subject to judicial review under the same
7 procedure, time limits, and other requirements as are set forth in
8 IC 22-6.5-3-13 though IC 22-6.5-3-21 for review of an order of the
9 board.

10 (b) The record of the board's determination of the appropriate
11 bargaining unit and the exclusive representative may be a part of
12 the transcript of a proceeding under this section.

13 Sec. 16. The employer, upon receipt of a written authorization
14 from an employee subject to this chapter, shall:

- 15 (1) deduct from the pay of the employee the dues, fees, or
- 16 assessments designated or certified by the appropriate officer
- 17 of an employee organization; and
- 18 (2) remit those amounts to the employee organization.

19 Sec. 17. A collective bargaining agreement with an employee
20 organization that is recognized as an exclusive representative
21 under this chapter may include a provision requiring an employee
22 who is:

- 23 (1) covered by the collective bargaining agreement; but
- 24 (2) not a member of the employee organization;

25 to pay a proportionate share of the costs of the collective
26 bargaining process, contract administration, and matters affecting
27 wages, hours, and conditions of employment. This proportionate
28 share may not exceed the amount of dues uniformly required of
29 members of the employee organization.

30 Sec. 18. An employee organization referred to in section 17 of
31 this chapter shall certify to the employer the amount constituting
32 each nonmember employee's proportionate share. The employer
33 shall deduct the proportionate share payment from the earnings of
34 a nonmember employee and pay the amount to the employee
35 organization.

36 Sec. 19. Only the exclusive representative of the employees
37 within a bargaining unit may negotiate provisions in a collective
38 bargaining agreement providing for the payroll deduction of any
39 of the following:

- 40 (1) Labor organization dues.
- 41 (2) Fair share payment.
- 42 (3) Initiation fees.

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(4) Assessments.

Sec. 20. Except as provided in sections 17 and 18 of this chapter, deductions may be made only upon an employee's written authorization and shall be continued until:

(1) revoked in writing; or

(2) the termination date of the applicable collective bargaining agreement.

Sec. 21. A collective bargaining agreement providing for an employee who is not a member of the employee organization recognized as the exclusive representative to pay a proportionate share must safeguard the right of nonassociation based upon bona fide religious tenets of an employee. An affected employee may be required to pay an amount equal to the employee's proportionate share, determined under a lawful proportionate share agreement, to a nonreligious charitable organization agreed upon by the employee and the exclusive representative to which the employee would otherwise pay the service fee.

Sec. 22. If an affected employee referred to in section 21 of this chapter and the exclusive representative are unable to agree on a payment under section 21 of this chapter, the board may establish an approved list of charitable organizations to which the payments may be made.

Sec. 23. It is an unfair labor practice for the employer to do any of the following:

(1) Interfere with, restrain, or coerce an employee in the exercise of the rights guaranteed in this chapter or IC 22-6.5-3 through IC 22-6.5-6.

(2) Dominate, interfere, or assist in the formation or administration of an employee organization, or contribute financial or other support to an employee organization.

(3) Discriminate in regard to:

(A) hiring practices;

(B) tenure of employment; or

(C) a term or condition of employment;

to encourage or discourage membership in an employee organization.

(4) Discharge or otherwise discriminate against an employee because that employee has:

(A) filed a complaint, an affidavit, or a petition; or

(B) given information or testimony under this chapter.

(5) Refuse to bargain collectively in good faith with an exclusive representative concerning the following:

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- (A) Wages.
- (B) Rates of pay.
- (C) Hours.
- (D) Working conditions.
- (E) Any other terms or conditions of employment.

(6) Fail or refuse to comply with:

- (A) this chapter; or
- (B) IC 22-6.5-3 through IC 22-6.5-6.

Sec. 24. It is an unfair labor practice for an employee organization to do any of the following:

(1) Interfere with, restrain, or coerce:

- (A) an employee in the exercise of the rights guaranteed in:

- (i) this chapter; or
- (ii) IC 22-6.5-3 through IC 22-6.5-5; or

- (B) the employer in the selection of an exclusive representative for collective bargaining or the adjustment of grievances.

(2) Cause or attempt to cause the employer to discriminate against an employee contrary to section 23 of this chapter.

(3) Refuse to bargain collectively in good faith with the employer if the employee organization is the exclusive representative.

(4) Engage in a strike.

(5) Fail to comply with this chapter or IC 22-6.5-3 through IC 22-6.5-4.

Sec. 25. It is not an unfair labor practice for the employer to confer with an employee without loss of time or pay by the employee during working hours.

Sec. 26. It is not an unfair labor practice for an employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.

Chapter 3. Complaints

Sec. 1. (a) The employer or an employee, employee organization, or exclusive representative who is aggrieved by an alleged unfair labor practice may file a complaint with the board.

(b) The board shall serve a copy of the complaint on the respondent against whom the complaint was filed and notify the complainant and respondent of the date, time, and place of a hearing on the complaint.

Sec. 2. (a) The board shall hold a hearing on a complaint not less than five (5) days or more than thirty (30) days after the complaint is served on the respondent.

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(b) A notice of a hearing may not be issued based upon an alleged unfair labor practice occurring more than ninety (90) days before the filing of the complaint, unless the complainant was prevented from filing the complaint because of service in the armed forces. In that event, the complaint must be filed not more than ninety (90) days after the complainant's discharge from the armed forces.

Sec. 3. (a) A complaint may be amended by the complainant at any time before the issuance of an order by the board if the respondent would not be unfairly prejudiced by the amendment.

(b) The respondent shall file an answer to the original or amended complaint. The complainant and the respondent are parties and are entitled to appear in person or otherwise give testimony at the hearing held under section 2 of this chapter. At the discretion of the board, an interested person may be allowed to intervene in the hearing and present testimony.

Sec. 4. The board is not bound by the rules of evidence in conducting a hearing under this chapter. Testimony received at a hearing shall be reduced to writing and filed with the board. After receiving the testimony, the board may take further testimony or hear arguments upon notice to the parties.

Sec. 5. (a) In a proceeding on a complaint under this chapter, the board shall make a determination based on the preponderance of evidence received.

(b) If the board determines that the respondent was or is engaged in an unfair labor practice, the board shall state the findings of fact and serve on the respondent an order requiring that the respondent cease the unfair labor practice and take affirmative actions, including reinstatement of an employee with or without back pay, to carry out this chapter, IC 22-6.5-2, or IC 22-6.5-4. The order may further require that the respondent make reports showing the extent of the respondent's compliance with the order.

Sec. 6. If the board determines that a respondent:

- (1) did not engage in; or
- (2) is not engaging in;

an unfair labor practice, the board shall state the findings of fact and dismiss the complaint.

Sec. 7. A hearing may be conducted by:

- (1) a member of the board; or
 - (2) a hearing examiner or an agency designated by the board;
- instead of by the full board. However, after the hearing, the

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member, hearing examiner, or agency shall serve on the parties and file with the board proposed findings and a recommended order.

Sec. 8. If an exception is not filed by a party:

- (1) within twenty (20) days after service on the parties; or
- (2) within a period authorized by the board;

the recommended order filed under section 7 of this chapter becomes the order of the board.

Sec. 9. If an exception to a recommended order filed under section 7 of this chapter is filed, the board shall grant review if the board determines that the exception raises a substantial issue of fact or law.

Sec. 10. If the board determines that an exception to a recommended order filed under section 7 of this chapter does not raise a substantial issue of fact or law, the recommended order becomes the order of the board.

Sec. 11. An order of the board under sections 8 through 10 of this chapter is a final order and binding on the parties to the complaint, subject to judicial review under sections 12 through 21 of this chapter.

Sec. 12. A party aggrieved by an order of the board may petition the court for a review of the order and for appropriate relief. A petition filed under this section must be filed not later than thirty (30) days after service of the board's order on the complainant and respondent under:

- (1) IC 22-6.5-2-6 through IC 22-6.5-2-15; or
- (2) sections 1 through 10 of this chapter;

Sec. 13. If a petition is not filed within the thirty (30) day period allowed by section 12 of this chapter, the order may not be reviewed. The board may file a petition with the court to enforce the order.

Sec. 14. After a petition to enforce an order is filed under section 12 of this chapter, the court shall have notice of the petition served upon the:

- (1) parties; and
- (2) attorney general as provided in IC 4-6-2-1, who shall defend the action.

The court shall send to the board a copy of the notice served on the parties under subdivision (1).

Sec. 15. In a proceeding on a petition filed under section 12 of this chapter, an objection that was not made at the hearing conducted under section 2 of this chapter or IC 22-6.5-2-7 may not

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be considered by the court, unless the failure to make the objection is excused because of extraordinary circumstances.

Sec. 16. If either party to a petition filed under section 12 of this chapter applies to the court for leave to introduce additional evidence and shows to the satisfaction of the court that:

- (1) the additional evidence is material; and
- (2) there were reasonable grounds for the failure to introduce the evidence in the hearing conducted under section 2 of this chapter;

the court may order the additional evidence to be taken by the board and made a part of the record.

Sec. 17. After a court, under section 16 of this chapter, orders the board to make additional evidence a part of the record, the board:

- (1) may modify the findings of fact by reason of the additional evidence; and
- (2) shall file any modified findings and any recommendations for a modification or setting aside of the original order with the court.

Sec. 18. A party that petitions a court for review of an order of the board under section 12 of this chapter or IC 22-6.5-2-7 must file a record of the hearing, certified by the board, with the court. At any time upon reasonable notice, until a record of the hearing is filed, the board may:

- (1) modify; or
- (2) set aside;

all or part of a finding or an order made or issued by the board.

Sec. 19. After the record of a hearing conducted under section 2 of this chapter or IC 22-6.5-2-7 is filed with the court under section 18 of this chapter, the jurisdiction of the court to modify, set aside, or enforce a board's order and to grant other appropriate relief is exclusive, and the court's judgment and decree are final, subject to review in accordance with the rules of court.

Sec. 20. Petitions filed under sections 12 and 13 of this chapter or IC 22-6.5-2-7 shall be heard not later than sixty (60) days after the petitions are docketed. The petition takes precedence over all other civil matters except matters of the same character docketed earlier.

Sec. 21. In a court's review of an order of the board under this chapter, or a petition filed with the court to enforce an order, the original or modified findings of fact by the board with respect to questions of fact, if supported by substantial evidence on the record

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considered as a whole, are conclusive.

Chapter 4. Mediation and Arbitration

Sec. 1. This chapter applies to all bargaining units.

Sec. 2. The employer and employees shall bargain collectively. The parties shall enter into a contract embodying the matters on which the parties have agreed during the collective bargaining process.

Sec. 3. A contract may not include provisions in conflict with any of the following:

- (1) A right or benefit established by federal or state law.**
- (2) Employee rights described in this article.**
- (3) Employer rights described in this article.**

Sec. 4. A collective bargaining contract may be in effect for more than one (1) year.

Sec. 5. A contract entered into under section 2 of this chapter must contain a grievance resolution procedure that applies to all employees in the bargaining unit. This procedure must provide for the final and binding arbitration of disputes concerning the administration or interpretation of the contract. The arbitration provisions of the contract are subject to IC 34-57-1.

Sec. 6. Collective bargaining must begin by May 1 of a year in which a collective bargaining agreement is to expire. The parties shall inform the board of the results of collective bargaining.

Sec. 7. If the exclusive representative and the employer have not agreed on a contract forty-five (45) days after collective bargaining begins under section 6 of this chapter, either party may:

- (1) notify the board of the inability to reach an agreement; and**
- (2) ask the board for mediation to begin.**

Sec. 8. The board shall make a mediator available to the parties at the board's expense within seven (7) days after the board is notified under section 7 of this chapter.

Sec. 9. The mediator provided under section 8 of this chapter shall:

- (1) communicate with both the employer and the exclusive representative; and**
- (2) aid the employer and exclusive representative in making a settlement so that the parties may enter into a contract.**

Sec. 10. If a dispute has not been resolved, not later than twenty-one (21) days after either party makes a request for mediation under section 7 of this chapter the employer or exclusive representative shall submit a written request for arbitration to the

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board.

Sec. 11. Not later than ten (10) days after a request for arbitration has been submitted under section 10 of this chapter, the employer and the exclusive representative shall each select a member to a panel of arbitration. The employer and exclusive representative shall advise each other and the board of the selections.

Sec. 12. Not later than seven (7) days after the request of either party for arbitration is submitted to the board under section 10 of this chapter, the board shall select from the permanent staff of factfinders or panel of part-time factfinders established under IC 20-29-8-2 five (5) persons as nominees to serve as impartial arbitrators on the arbitration panel. Not later than five (5) days after the selection, the parties shall each alternately strike the names of two (2) of the nominees, with the first party to request arbitration under section 10 of this chapter striking first.

Sec. 13. The member remaining after the striking process under section 12 of this chapter and the members selected by the employer and the exclusive representative constitute the panel. The panel member not struck under section 12 of this chapter is the chairperson of the arbitration panel.

Sec. 14. The chairperson of the arbitration panel shall schedule a hearing to begin not later than fifteen (15) days after the panel's membership is selected and shall give reasonable notice of the date, time, and place of the hearing to the parties. The hearing shall be held at a location the board considers appropriate. The chairperson shall preside over the hearing and take testimony.

Sec. 15. Oral or documentary evidence and other data considered relevant by the arbitration panel may be received in evidence at an arbitration hearing held under this chapter. The hearing shall be informal and the rules of evidence do not apply. A verbatim record of the hearing must be made. The arbitration panel shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering the transcripts, but the transcripts are not necessary for a decision by the arbitration panel.

Sec. 16. If a member of an arbitration panel assembled under this chapter is a public officer or employee, the public officer or employee continues on the payroll of the employer without loss of pay during the member's service on the arbitration panel.

Sec. 17. A hearing conducted by an arbitration panel under this chapter may be adjourned periodically but, unless otherwise

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1 agreed to by the parties, must be concluded not later than thirty
 2 (30) days after the date of commencement. Arbitration proceedings
 3 under this chapter may not be interrupted or terminated by an
 4 unfair labor practice charge filed by either party at any time.

5 **Sec. 18. An arbitration panel may do the following:**

6 (1) Administer oaths.

7 (2) Require the attendance of witnesses and the production of
 8 evidence considered material to a just determination of an
 9 issue in dispute.

10 **Sec. 19. An arbitration panel may issue a subpoena needed for**
 11 **the attendance of a witness or the production of evidence under**
 12 **section 18 of this chapter.**

13 **Sec. 20. If:**

14 (1) a person refuses:

15 (A) to obey a subpoena;

16 (B) to be sworn; or

17 (C) to testify; or

18 (2) a witness, a party, or an attorney is guilty of contempt at
 19 a hearing held under section 14 of this chapter;

20 the arbitration panel may request the circuit or superior court of
 21 the county in which the hearing is held to issue an order.

22 **Sec. 21. The failure to obey an order issued by a court at the**
 23 **request of an arbitration panel under section 20 of this chapter**
 24 **may be punished by the court as contempt.**

25 **Sec. 22. Before an award is made, the chairperson of an**
 26 **arbitration panel may remand the dispute to the parties for further**
 27 **collective bargaining for a period not to exceed two (2) weeks. If**
 28 **the dispute is remanded, the time provisions of this chapter are**
 29 **extended for a period equal to that of the remand. The chairperson**
 30 **of the arbitration panel shall notify the board of a remand under**
 31 **this section.**

32 **Sec. 23. Not later than the conclusion of a hearing held under**
 33 **section 14 of this chapter, the arbitration panel shall identify the**
 34 **economic issues in dispute and direct each party to submit to the**
 35 **arbitration panel and to each other, within the time limit the panel**
 36 **prescribes, each party's last offer of settlement on each economic**
 37 **issue. The determination of an arbitration panel is conclusive**
 38 **concerning the:**

39 (1) identification of issues in dispute; and

40 (2) issues that are economic.

41 **Sec. 24. The arbitration panel shall:**

42 (1) make written findings of fact and adopt a written opinion

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not later than the end of:

- (A) thirty (30) days after the conclusion of a hearing; or
- (B) any further additional periods to which the parties agree; and
- (2) mail a copy of the opinion to the:
 - (A) parties;
 - (B) representatives of the parties; and
 - (C) board.

Sec. 25. (a) Concerning economic issues, the arbitration panel shall adopt the last offer of settlement that, in the opinion of the arbitration panel, complies with the applicable factors prescribed in section 26 of this chapter on an issue by issue basis.

(b) The:

- (1) findings;
- (2) opinions; and
- (3) order;

as to all other issues must also be based upon the applicable factors prescribed in section 26 of this chapter.

Sec. 26. If there is no agreement between the parties, or if there is an agreement but the parties have begun negotiations or discussions for a new agreement or an amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The:
 - (A) interests and welfare of the public; and
 - (B) financial ability of the employer to meet the costs.
- (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in comparable states.
- (5) The average consumer prices for goods and services.
- (6) The overall compensation currently received by the employees, including the following:
 - (A) Direct wage compensation, vacations, holidays, and other excused time.
 - (B) Insurance, pension, medical, and hospitalization benefits.

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(C) The continuity and stability of employment.

(7) Changes in any of the circumstances during the arbitration proceedings.

(8) Other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through:

(A) voluntary collective bargaining;

(B) mediation;

(C) factfinding; or

(D) arbitration between parties; in public or private employment.

Sec. 27. If a fiscal year begins:

(1) after the initiation of arbitration procedures under this chapter; and

(2) before the arbitration decision or enforcement of the decision;

this occurrence does not render a dispute moot or impair the jurisdiction or authority of the arbitration panel or the decision.

Sec. 28. Except as provided in section 29 of this chapter, an increase in rates of compensation awarded by an arbitration panel under this chapter is effective at the beginning of the employer's fiscal year beginning on or after the date of the arbitration award.

Sec. 29. If a fiscal year begins after the initiation of arbitration procedures, section 28 of this chapter does not apply. However, an increase awarded by an arbitration panel under this chapter may be retroactive to the beginning of the fiscal year.

Sec. 30. The parties may, by stipulation, amend or modify an award of arbitration under this chapter.

Sec. 31. The costs of arbitration under this chapter shall be shared equally by the parties.

Sec. 32. Upon petition by either the employer or the exclusive representative, an order of an arbitration panel under this chapter may be reviewed by the circuit or superior court in the county in which the hearing was held. However, the only grounds upon which the panel's order may be reviewed are:

(1) the arbitration panel was without authority or exceeded the panel's authority;

(2) the order is arbitrary or capricious; or

(3) the order was procured by fraud, collusion, or unlawful means.

Sec. 33. A petition for review of an order of an arbitration panel under section 32 of this chapter must be filed with the circuit or

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superior court not later than ninety (90) days after the issuance of the arbitration order. The pendency of the proceeding for review does not automatically stay the order of the arbitration panel.

Sec. 34. The court shall hear the evidence with respect to the issues raised under section 32 of this chapter and may reverse the order of the arbitration panel only if at least one (1) of the grounds in section 32 is found.

Sec. 35. During the pendency of proceedings before an arbitration panel, currently applicable wages, hours, and other conditions of employment may not be changed by either party without the consent of the other. However, a party may consent to a change without prejudice to the party's rights or position under IC 22-6.5-2 or this chapter.

Sec. 36. An employer may not lock out or prevent an employee from performing services.

Sec. 37. The employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, or terms and conditions of employment to an alternative form of impasse resolution without regard to this chapter.

Sec. 38. Except as provided in section 8 of this chapter, the cost of procedures under this chapter as determined by the board shall be paid equally by the parties. The board shall establish a complete procedure for the collection and payment of the cost.

Sec. 39. After the exhaustion of an arbitration mandated by this chapter or procedures mandated by a collective bargaining agreement, a civil action for the violation of an agreement between an employer and a labor organization representing employees may be brought by either party to the agreement in the circuit or superior court of the county in which the hearing under section 14 of this chapter was held.

Chapter 5. State Employee Bargaining Units

Sec. 1. (a) An employee must be included under one (1) of the twelve (12) bargaining units as follows:

(1) Labor, trades, and crafts classes, including the following:

(A) Carpenters.

(B) Electricians.

(C) Plumbers.

(D) Print shop workers.

(E) Auto mechanics.

(F) Maintenance workers.

(G) Similar classes.

(2) Administrative and technical support that includes clerical

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and administrative nonprofessional classes, including the following:

- (A) Typists.
- (B) Secretaries.
- (C) Account clerks.
- (D) Computer operators.
- (E) Office service personnel.
- (F) Personnel who provide support services to professionals.
- (G) Other nonprofessional employees who do not meet the standards of other nonprofessional units.

(3) Regulatory, inspection, and licensure nonprofessionals that include individuals who review public and commercial activities, including the following:

- (A) Tax examiners.
- (B) Driver's license examiners.
- (C) Meat inspectors.
- (D) Similar classes.

(4) Health and human services nonprofessionals, including the following:

- (A) Licensed practical nurses.
- (B) Nursing aides.
- (C) Psychiatric attendants.
- (D) Therapy aides.
- (E) Claims takers.
- (F) Assistant caseworkers.
- (G) Similar classes.

(5) Regulatory, inspection, and licensure professional employees empowered to review certain public and commercial activities, including the following:

- (A) Revenue auditors.
- (B) Bank and insurance examiners.
- (C) Public health inspectors.
- (D) Similar classes.

(6) Health care professionals, including the following:

- (A) Registered nurses.
- (B) Pharmacists.
- (C) Licensed therapists.
- (D) Similar classes.

(7) Social services and counseling professionals who provide services and benefits to eligible persons, including the following:

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- 1 (A) Employment and training personnel.
 2 (B) Welfare caseworkers.
 3 (C) Social workers.
 4 (D) Counselors.
 5 (E) Similar classes.
 6 (8) Engineering, scientific, and information services
 7 professionals, including the following:
 8 (A) Architects.
 9 (B) Chemists.
 10 (C) Geologists.
 11 (D) Civil engineers.
 12 (E) Computer programmers.
 13 (F) System analysts.
 14 (G) Similar classes.
 15 (9) Professional administrative employees with general
 16 business responsibilities, including the following:
 17 (A) Accountants.
 18 (B) Buyers.
 19 (C) Administrators.
 20 (D) Other professional employees who do not meet the
 21 standards of the other professional units.
 22 (10) Public safety, protective service workers, and
 23 institutional security employees, including the following:
 24 (A) Correctional officers.
 25 (B) Building guards.
 26 (C) Firefighters.
 27 (D) Motor carrier inspectors of the state police
 28 department.
 29 (E) Similar classes.
 30 (11) Sworn police officers, including the following:
 31 (A) Police employees of the state police department.
 32 (B) Conservation officers of the department of natural
 33 resources.
 34 (C) Excise police of the alcohol and tobacco commission.
 35 (D) Gaming agents of the Indiana gaming commission.
 36 (12) Teachers at state institutions whose compensation is
 37 determined under any of the following:
 38 (A) IC 11-10-5-4.
 39 (B) IC 12-24-3-4.
 40 (C) IC 16-19-4-7.
 41 (b) Bargaining units other than those listed in subsection (a)
 42 may be established by the board.

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1 **Sec. 2. The director of the state personnel department shall**
 2 **determine the assignment of each state employee, based on the**
 3 **state employee's job classification, to a bargaining unit under**
 4 **section 1 of this chapter unless an employee or an employee**
 5 **organization challenges the assignment.**

6 **Sec. 3. (a) If an employee or employee organization challenges**
 7 **a determination under section 2 of this chapter by filing a**
 8 **bargaining unit amendment and clarification petition with the**
 9 **board, the assignment is void. The board shall then determine the**
 10 **appropriate assignment.**

11 **(b) In determining the appropriateness of the assignment of an**
 12 **employee to a bargaining unit in section 1 of this chapter, the**
 13 **board shall consider the following:**

14 **(1) The principles of efficient administration of government,**
 15 **including limiting the fragmentation of government**
 16 **administrative authority.**

17 **(2) The existence of a community of interest among the**
 18 **employees assigned to the bargaining unit.**

19 **(3) The recommendations of the parties involved.**

20 **Sec. 4. Each bargaining unit under this chapter must be**
 21 **established on a statewide basis.**

22 **Chapter 6. Miscellaneous Provisions**

23 **Sec. 1. If this chapter or IC 22-6.5-2 through IC 22-6.5-4 conflict**
 24 **with an Indiana statute, rule, or executive order relating to wages,**
 25 **hours, conditions of employment, and employment relations, this**
 26 **chapter or IC 22-6.5-2 through IC 22-6.5-4 prevail.**

27 **Sec. 2. (a) An employee or exclusive representative may not**
 28 **participate in a strike against the employer.**

29 **(b) An employee engaging in a strike is subject to discharge by**
 30 **the employer.**

31 **(c) An exclusive representative that engages in or sanctions a**
 32 **strike loses the right to represent employees for one (1) year after**
 33 **the date of the action.**

34 **(d) The employer may not pay an employee for days during**
 35 **which the employee was engaged in a strike.**

36 **SECTION 3. IC 35-44-2-4 IS AMENDED TO READ AS**
 37 **FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) A public servant**
 38 **who knowingly or intentionally:**

39 **(1) hires an employee for the governmental entity that he serves;**
 40 **and**

41 **(2) fails to assign to the employee any duties, or assigns to the**
 42 **employee any duties not related to the operation of the**

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governmental entity;
commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under his supervision any duties not related to the operation of the governmental entity that he serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that he has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony.

(e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides.

(f) For the purposes of this section, an employee of a governmental entity who voluntarily performs services:

(1) that do not:

(A) promote religion;

(B) attempt to influence legislation or governmental policy; or

(C) attempt to influence elections to public office;

(2) for the benefit of:

(A) another governmental entity; or

(B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(3) with the approval of the employee's supervisor; and

(4) in compliance with a policy or regulation that:

(A) is in writing;

(B) is issued by the executive officer of the governmental entity; and

(C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment;

is considered to be performing duties related to the operation of the governmental entity.

(g) For purpose of this section, an employee of the state who is conferring with an agent of the state under IC 22-6.5-2-25 is

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1 **considered to be performing duties related to the operation of the**
2 **state.**

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